IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3829 OF 2005

Mohd. Sharif Mohd. Ali Shaikh ...Applicant

Vs.

The State of Maharashtra ...Respondent

Shri. Santosh Deshmukh for the Applicant.
Shri. R. Y. Mirza A.P.P. for the Respondent.

CORAM : A. S. OKA, J.
DATED : JUNE 30, 2005.

P.C.:

1. Heard Counsel appearing for the parties. F.I.R. has been registered against the Applicant and the co-accused at N.M.Joshi Marg Police Station of the offences punishable under sections 392, 394, 397, 427, 34 of the Indian Penal Code read with sections 3, 4 and 27 of the Arms Act. By this Application for bail, the Applicant is claiming bail both on the grounds of parity and on merits.

2. The case of the prosecution is that the Complainant was working as a peon with M/s. Suresh Brothers having office at Opera House, Mumbai. The said Firm is dealing in diamond business. It is alleged that on 12th January, 2004 the Complainant alongwith other peons had gone to various Firms for delivering diamonds for polishing and also for

collecting the polished diamonds. The incident took place when after collecting the polished diamonds they were returning to the Office of the Firm in a car. On the relevant day at about 16.15 hrs., at Lower Parel four unknown persons came in front of the car and asked the driver to open the dicky of the car. After the car stopped, the three other persons took positions and one of them assaulted one Bhalchandra who was sitting next to driver. It is alleged that one more person threatened the Complainant to get out of the car and asked for the bag containing the diamonds. The said person took cell phone of the Complainant and the other person pointed out revolver to two persons accompaning the Complainant namely Ajit Therade and Kishor Shah. The allegation is that they took away diamond bags in the pocket of the said Ajit and also took away the bag from the dicky of the car and therefore they sat in a car and fled away from the spot.

3. One of the co-accused Bhikaji Rajaram Sonawne has been enlarged on bail by the learned Additional Sessions Judge by order dated 7th August, 2004.

4. The learned Counsel appearing for the Applicant pointed out that the role allegedly played by the

Applicant in this Application is not different from the role played by the said Bhikaji. He pointed out that the learned Additional Sessions Judge enlarged the said Bhikaji on bail even after recording a finding that there was a prima facie case is against said accused Bhikaji. He submitted that all antecedents of the said Bhikaji were pointed out to the learned Additional Sessions Judge. He, therefore, submitted that there is hardly any difference between the roles of the Applicant in the said Application and the said Bhikaji and, hence, the Applicant is entitled to be enlarged on bail on ground of parity. He submitted that the Applicant is in custody from 23rd January, 2004. He submitted that considering the fact that the Applicant is in custody for last about one and half years, he is entitled to be enlarged on bail. He placed reliance on the decision of the Apex Court reported in **2000 ALL MR (Cri) 1238, Supreme Court Vivek Kumar Vs. State of Uttar Pradesh.** He also relied upon another decision of the Apex Court reported in **AIR 1999 Supreme Court 1533, Sunil K. Sinha Vs. State of Bihar.** Lastly, he placed reliance on decision of this Court reported in **1996 III LJ 192, Dhiraj Narayan Makwan Vs. State of Maharashtra** and submitted that after spending one and half years in jail, there is no likelihood of trial being concluded

in reasonable time and therefore, the Applicant is entitled to be enlarged on bail.

5. Learned A.P.P. has opposed the Application by pointing out the material against the Applicant. He submitted that there are criminal antecedents of the Applicant. He pointed out that the role played by the Applicant herein is totally different from the role played by Bhikaji who is ordered to be enlarged on bail and therefore, the Applicant is not entitled to claim parity. He submitted that even on merits the Applicant is not entitled to the relief.

6. I have considered the rival submissions. The case of the prosecution is that the said Bhikaji was standing near the scene of offence and was threatening the passers-by with a "katta" which he was having. The allegation against the Applicant is that the Applicant threatened the Complainant and one Ajit Therade by showing revolver and took away the parcel containing diamonds from the pocket of the said Therade. The learned Counsel appearing for the Applicant submitted that there is a delay in holding Test Identification Parade and some of the eye-witnesses have not identified the Applicant. The Applicant was arrested on 28th January, 2004 and Test

Identification Parade is held on 11th February, 2004.Therefore, it cannot be said that there is great delay in holding Test Identification Parade. Atleast one eye-witness has identified the Applicant and has described the role of the Applicant who has actually taken away a parcel containing diamonds. Therefore, in my view, role played by the Applicant is totally different and, therefore, the Applicant is not entitled to claim parity on the basis of the order passed in favour of one Bhikaji.

7. The learned A.P.P. has brought to my notice that there are two other offences registered against the Applicant. One is registered vide the C.R.No.356 of 2002 at Mahim Police Station for the offences punishable under sections 392, 394, 397 and 34 of the Indian Penal Code and the other is C.R.No. 65 of 2002 registered at D.N. Nagar Police Station for the offences punishable under sections 399, 402 of the Indian Penal Code read with sections 3 and 25 of the Arms Act. He pointed out that the Applicant has been discharged so far as the offence registered at Mahim Police Station is concerned. He placed on record copy of F.I.R. registered against the Applicant in D.N. Nagar Police Station which prima facie shows that the Applicant was caught when he was attempting to commit

robbery and he was found to be in possession of a country made revolver with seven live bullets.

8. Considering the role played by the Applicant and considering the aforesaid criminal record of the Applicant, in my view, the Applicant is not entitled to be enlarged on bail. The decisions which are made upon by the Applicants may not be helpful to the Applicant as in the cases before the Apex Court and this Court, there does not appear to be existence of criminal antecedents of the Applicants concerned. Hence, Application is rejected.

JUDGE